

JESSE A.P. BAKER (SBN 36077)
ALDRIDGE PITE, LLP
The Ogden Building
9311 SE 36th St, Ste 207
Mercer Island, WA 98040
Telephone: (425) 644-6471

Honorable Whitman L. Holt
CHAPTER: 11
HEARING DATE: March 27, 2024
HEARING TIME: 10:00 AM
RESPONSE DATE: March 18, 2024

Mailing Address:

8880 Rio San Diego Drive, Suite 725
San Diego, CA 92108
Telephone: (425) 644-6471
Facsimile: (619) 590-1385

Attorneys for Secured Creditor:
Wilmington Savings Fund Society, FSB, not in
its individual capacity, but solely as Owner
Trustee of MFA 2022-RTL1 Trust; Lima One
Capital, LLC as servicer.

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF WASHINGTON (SPOKANE/YAKIMA)**

In re

ICAP ENTERPRISES, INC. *et al.*,,

Debtors¹

Chapter 11

Lead Case No. 23-01243-WLH11
Jointly Administered

**OBJECTION TO JOINT MOTION OF
THE DEBTORS AND COMMITTEE FOR
ORDER: (I) AUTHORIZING THE
DEBTORS TO OBTAIN
SUPPLEMENTAL POST-PETITION
SECURED FINANCING; (II) GRANTING
SUPERPRIORITY ADMINISTRATIVE
EXPENSE CLAIMS; AND (III) RELATED
RELIEF.**

¹ The Debtors (along with their case numbers) are iCap Enterprises, Inc. (Case No. 23- 01243-11); iCap Pacific NW Management, LLC (Case No. 23-01261-11); iCap Vault Management, LLC (Case No. 23-01258-11); iCap Vault, LLC (Case No. 23-01256- 11); iCap Vault 1, LLC (Case No. 23-01257-11); Vault Holding 1, LLC (Case No. 23-01265-11); iCap Investments, LLC (Case No. 23-01255-11); iCap Pacific Northwest Opportunity and Income Fund, LLC (Case No. 23-01253-11); iCap Equity, LLC (Case No. 23-01247-11); iCap Pacific Income 4 Fund, LLC (Case No. 23-01251- 11); iCap Pacific Income 5 Fund, LLC (Case No. 23- 01249-11); iCap Northwest Opportunity Fund, LLC (Case No. 23-01253-11); 725 Broadway, LLC (Case No. 23- 01245-11); Senza Kenmore, LLC (Case No. 23-01254- 11); iCap Campbell Way, LLC (Case No. 23-01250-11); UW 17th Ave, LLC (Case No. 23-01267-11); iCap Broadway, LLC (Case No. 23-01252-11); VH 1121 14th LLC (Case No. 23-01264-11); VH Senior Care LLC (Case No. 23-01266-11); VH Willows Townhomes LLC (Case No. 23-01262-11); iCap @ UW, LLC (Case No. 23- 01244-11); VH 2nd Street Office, LLC (Case No. 23- 01259-11); VH Pioneer Village LLC (Case No. 23-01263- 11); iCap Funding LLC (Case No. 23-01246-11); iCap Management LLC (Case No. 23-01268-11); iCap Realty, LLC (Case No. 23-01260-11) Vault Holding, LLC (23- 01270-11); iCap Pacific Development LLC (23-01271- 11); iCap Holding LLC (23-01272-11); iCap Holding 5 LLC (23-01273-11); iCap Holding 6 LLC (23-01274-11); Colpitts Sunset, LLC (23-01432-11); CS2 Real Estate Development LLC (23-01434-11); and iCap International Investments, LLC (23-01464-11). Consult the Docket in (Case No. 23-01243-11) for all matters affecting these cases.

Collateral (VH 1121 14th LLC):

1117 -1121 14th Ave,

Collateral (VH Willows Townhomes, LLC):

4906A, 4910B, 4912B, 4918C S Willow ST.

Wilmington Savings Fund Society, FSB, not in its individual capacity, but solely as Owner Trustee of MFA 2022-RTL1 Trust; Lima One Capital, LLC as servicer (“Wilmington”), Secured Creditor of the above-entitled Debtor, ICAP ENTERPRISES, INC. *et al* (“Debtors”) hereby submits its Objection (“Opposition”) to Debtors’ and Committee’s Joint Motion for Order: 1) Authorizing The Debtors Obtain Supplemental Post-Petition Secured Financing; (II) Granting Superiority Administrative Expense Claims; and (III) Granting Related (“Motion”): The basis of the Opposition is stated below

I. INTRO

Wilmington joins the U.S. Trustee [Dkt. No.583] in requesting the Court deny the Debtors request for a Ponzi scheme finding in connection with this Motion. Such a finding is overwhelmingly sought in the context of an adversary proceeding. The Debtors’ request is over-broad, fraught with due-process concerns, and an unnecessary component of a Motion for additional post-petition financing. For the reason discussed below, Wilmington respectfully request the Court deny the Parties’ request for a Ponzi scheme finding in connection with this Motion.

II. STATEMENT OF FACTS

The 1117 – 1121 14th Avenue Claim:

This Loan is evidence by a Commercial Promissory Note executed by VH 1121 14th, LLC (“Borrower”), dated January 28, 2022 in favor of Lima One Capital, LLC (“Lender”) in the principal amount of \$3,000,0000 (“14th Ave Note”). (See, Case No:23-01264; Proof of Claim No:1-1). The 14th Avenue Note is secured by an Open End Commercial Deed of Trust, Security Agreement, and Fixtures Filing (“14th Ave Deed of Trust”) against the real properties identified as 11117 14th Avenue #A and #B, Seattle, WA 98122, 1119 14th Avenue #A and #B, Seattle, WA

1 98122 and 1121 14th Avenue, Seattle WA 98102 (collectively, “1117-1121 14th Ave Property”),
2 as more particularly described in the Deed of Trust duly recorded on January 31, 2022, in King
3 County, State of Washington. (See, Case No:23-01264; Proof of Claim No:1-1). The 14th Ave
4 Note and Deed of Trust may be referred to collectively herein as the “14th Ave Loan.”
5 Subsequently, all of the Lender’s beneficial interest in the 14th Ave Loan was assigned and
6 transferred to Wilmington. (See, Case No:23-01264; Proof of Claim No:1-1).

7 ***The VH Willows Townhome Claim:***

8 This Loan is evidenced by a Commercial Promissory Note executed by VH Willows
9 Townhomes, LLC (“Willows Borrower”), dated January 28, 2022 in favor of Lima One Capital,
10 LLC (“Lender”) in the principal amount of \$2,985,000 (“Willows Note”). (See, Case No:23-
11 01262; Proof of Claim No:1-1). The Willow Note is secured by an Open End Commercial Deed
12 of Trust, Security Agreement, and Fixtures Filing (“Willows Deed of Trust”) against the real
13 property identified as 4906 A South Willow Street, 4910B South Willow Street, 4921B South
14 Willows Street, 4918 C South Willow Street, 4922A South Willow Street, 4922B South Willow
15 Street, Seattle, WA 98118 (collectively, “Willows Properties”)², as more particularly described in
16 the Deed of Trust duly recorded on January 31, 2022, in King County, State of Washington. (See,
17 Case No:23-01262; Proof of Claim No:1-1). The Willows Note and Deed of Trust may be referred
18 to collectively herein as the “Willows Loan.” Subsequently, all of the Lender’s beneficial interest
19 in the Willows Loan was assigned and transferred to Wilmington. See, Case No:23-01262; Proof
20 of Claim No:1-1);

21 ***The Bankruptcy Proceedings:***

22 On September 29, 2023, Debtor, VH 1121 14th, LLC (“VH 1121 14th, LLC”) commenced
23 a case by filing a voluntary petition under Chapter 11 of the Bankruptcy Code in the United States
24 Bankruptcy Court for the Eastern District of Washington and was assigned Case No.23-01264-
25 WLH-11.

26
27 ² While Wilmington’s Deed of Trust includes the 4922A/B S. Willow Street Properties, counsel for Wilmington has
28 been informed that prior to the bankruptcy filing Wilmington executed and recorded a Partial Re-Conveyances with
respect to the 4922A and B Properties in June of 2023.

1 On September 20, 2023, Debtor, VH Willows Townhomes, LLC (“VH Willows”)
2 commenced a case by filing voluntary petition under Chapter 11 of the Bankruptcy Code in the
3 United States Bankruptcy Court for the Eastern District of Washington and was assigned Case
4 No.23-01262-WLH-11

5 Concurrently, on September 29, 2023, Debtor, ICAP Enterprises, Inc, commenced a case
6 by filing a voluntary petition under Chapter 11 of the Bankruptcy Code in the United States
7 Bankruptcy Court for the Eastern District of Washington and was assigned Case No.23-01243-
8 WLH-11.

9 On September 29, 2023, ICAP Enterprises, Inc. also filed a Motion for Joint Administration
10 of the VH 1121 14th, LLC and VH Willows Bankruptcy Cases, which was granted by Court Order
11 entered on October 2, 2023. (See, Dkt. Nos.2,9)

12 On February 23, 2024, the Debtors’ and Committee filed the instant Motion, and a
13 Supporting Brief. (See, Dkt. Nos.467,542). The Motion seeks an additional \$5 million to fund
14 litigation and pursue recoveries from “third parties” to maximize distribution to investors. The
15 Motion does not provide any type of cost benefit analysis in support of this request, including, but
16 not limited to, projected costs and anticipated recoveries from 3rd parties through the anticipated
17 litigation or the feasibility of such litigation. Further, though not disclosed in the caption, the
18 Motion also requests the Court make a finding that Debtors’ pre-petition operations constituted a
19 Ponzi Scheme and the Debtors will be entitled to the Ponzi Scheme presumption as to any recovery
20 actions. While Wilmington may not be privy to the Debtors’ complete financial needs justifying
21 an additional \$5 million loan, it believes the Debtors’ request for a Ponzi finding in connection
22 with the Motion is not warranted at this state of the proceedings, and is unnecessary to granting
23 the Motion notwithstanding the DIP Lender’s request.

24 On March 11, 2024, the U.S. Trustee filed an Objection to the Debtors’ Motion seeking
25 the Ponzi schedme finding in connection with the Motion. (See, Dkt. No.583).

26 ///

27 ///

28 ///

II. ARGUMENT

A. WILMINGTON OBJECTS TO THE DEBTORS' REQUEST FOR A PONZI SCHEME FINDING IN CONNECTION WITH THE MOTION AS SUCH A REQUEST IS NOT A NECESSARY ELEMENT FOR POST-PETITION FINANCING UNDER SECTION 364, BUT SHOULD BE MADE IN THE CONTEXT OF AN ADVERSARY PROCEEDING SO AS TO PROVIDE SUFFICIENT DUE PROCESS PROTECTIONS TO IDENTIFIED THIRD PARTIES SUBJECT TO SUCH LITIGATION AND A MEANINGFUL OPPORTUNITY TO INVESTIGATE AND TO RESPOND TO THE SAME

The Debtors argue the Court can make the determination of whether the Debtors' business constituted a Ponzi scheme in the context of a contested matter; however, it does not mean it should in connection with Debtors' Motion, and the Debtors cite no case on point in this context. Wilmington joins the Trustee and agrees that Debtors' request for Ponzi scheme finding is not a required component of their request for post-petition financing under 11 U.S.C. Section 364 despite the proposed DIP Lender's request. Further, this would, as framed, create due process issues that are more appropriately protected and addressed in the adversary context where such issues customarily arise in connection with the related causes of action.

The purpose of Debtors' anticipated litigation is the recovery of money or property, and such relief requires an adversary proceeding. F.R.B.P. 7001(1). As the Trustee notes, a Ponzi scheme finding arises overwhelmingly in the context of adversary proceedings for the recovery of money or property, which requires the filing of a complaint that identifies specific defendants, has specific pleading requirements as to the causes, provides an opportunity to assert affirmative defenses, and an appropriate the discovery process under reasonable time frames that allow the parties to both investigate, appropriately respond to, and/or challenge any such findings and/or causes of action. Debtors' request is in sharp contrast to the usual course of things, particularly the extremely truncated discovery procedures Debtors initially sought to impose on largely unidentified parties via shortened notice, which does raise an issue as to the fundamental, due

1 process fairness of the Debtors' request in the context of this Motion. (*See*, Dkt. No.553).

2 The Debtors' Ponzi Scheme finding and request that a presumption simply apply across
3 the board is too broad and ambiguous as it does not substantively identify a particular defendant,
4 transaction, target, or entity by name, but instead seeks this finding to presumably apply as to any
5 third party, with respect to any transaction of the Debtor entities and their pre-petition activities.
6 Debtors' request as framed fails to provide sufficient information and/or notice and/or a
7 meaningful opportunity to respond and even Wilmington cannot tell if it's to be an intended target
8 of the anticipated litigation, and whether it must retain its own expert to review and analyze the
9 Debtors' asserted reports, and/or conduct its own specific discovery to mount a response or
10 defense. Wilmington objects to the Debtors' request in this overly broad manner, particularly as
11 the request was initially obscured in the Motion and followed with requests on shortened notice,
12 and is certainly not a necessary component to the financing aspect of the Motion.
13
14

15 The Trustee's comments are both reasonable and prudent, the Debtors remain free to make
16 the factual declarations they believe to be true, but they can and should do so with sufficient due
17 process in the context of the adversary proceedings under customary processes rather than in haste
18 to have these incomplete allegations "... transformed into conclusive factual findings on
19 fraudulent intent against others" in the broadest terms possible that are not specifically identified
20 or afforded sufficient opportunity to investigate and respond to such allegations.
21

22 III. CONCLUSION

23 The Debtors' attempt obtain a Ponzi scheme finding and related presumption on an
24 expedited basis in connection with the Motion is not equitable, and is unnecessary and should be
25 denied. The request is not a necessary component or element for seeking post-petition financing,
26 regardless of the lenders request. The Debtors are not prejudiced by this denial as they maintain
27 the ability to seek the Ponzi scheme finding and related presumption in connection with their
28 anticipated adversary litigation that will require Debtors to specifically identify a defendant,

1 delineate the specific transactions in question while also providing third parties with a meaningful
2 opportunity to investigate and respond to claims and causes of action under more reasonable and
3 appropriate circumstances. Accordingly, the DIP Motion should be denied or in the alternative, at
4 least the request for a Ponzi scheme finding denied in connection with the Motion with all rights
5 of all parties reserved for such litigation.
6
7

8 **ALDRIDGE PITE, LLP**

9 Dated: March 18, 2024

/s/ Jesse A.P. Banker

JESSE A.P. BAKER (WASBN 36077)

Attorney for *Wilmington Savings Fund Society, FSB*,
not in its individual capacity, but solely as Owner
Trustee of MFA 2022-RTL1 Trust; Lima One
Capital, LLC as servicer

Jesse A.P. Baker (SBN 36077)
jbaker@aldridgepite.com
ALDRIDGE PITE, LLP
The Ogden Building
9311 SE 36th St, Ste 207
Mercer Island, WA 98040
Telephone: (425) 644-6471
Facsimile: (619) 590-1385

Mailing Address:

8880 Rio San Diego Drive, Suite 725
San Diego, CA 92108
Telephone: (858) 750-7600
Facsimile: (619) 590-1385

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF WASHINGTON

In re

ICAP ENTERPRISES, INC. AKA ALTIUS
DEVELOPMENT, INC.,

Debtor.

Lead Case No. 23-01243-WLH11

Jointly Administered

PROOF OF SERVICE

I, Lauren Timby, declare that:

I am employed by Aldridge Pite, LLP. My business address is 8880 Rio San Diego Drive, Suite 725; San Diego, CA 92108. I am over the age of eighteen years and not a party to this cause.

On March 18, 2024, I caused the following documents:

- **OBJECTION TO JOINT MOTION OF THE DEBTORS AND COMMITTEE FOR ORDER: (I) AUTHORIZING THE DEBTORS TO OBTAIN SUPPLEMENTAL POST-PETITION SECURED FINANCING; (II) GRANTING SUPERPRIORITY ADMINISTRATIVE EXPENSE CLAIMS; AND (III) RELATED RELIEF.**

to be served in said cause by placing a copy thereof enclosed in a sealed envelope with postage thereon fully prepaid in the United States Mail and/or via electronic means as follows:

PROOF OF SERVICE

Page 1

ALDRIDGE PITE, LLP
8880 Rio San Diego Drive, Suite 725
San Diego, CA 92108
Telephone: (858) 750-7600

DEBTOR

iCap Enterprises, Inc.
8939 Sepulveda Blvd, Suite 110-223
Los Angeles, CA 90045
(Via U.S. Mail)

DEBTOR'S ATTORNEY

Bernard D. Bollinger, Jr.
BUCHALTER, a Professional Corporation
1000 Wilshire Boulevard, Suite 1500
Los Angeles, CA 90017
bbollinger@buchalter.com
(Via ECF)

U.S. TRUSTEE

U.S. Trustee
Department of Justice
US Court House 920 W Riverside Ave, Suite 593
Spokane, WA 99201
USTP.REGION18.SP.ECF@usdoj.gov
(Via Email)

BORROWER

VH 1121 14th, LLC, LLC
VH 1121 14th, LLC
PO Box 53232
Bellevue, WA 98015
(Via U.S. Mail)

DIP LENDER

Serene Investment Management, LLC
C/O Leob & Loeb, LLP
35 Music Square East, Suite 310
Nashville, TN 37203
(Via U.S. Mail)

Serene Investment Management, LLC
C/O Michael M. Feinberg Karr Tuttle Campbell
701 5th Avenue, Suite 3300
Seattle, WA 98104
(Via U.S. Mail)

CREDITOR COMMITTEE

The Official Committee of Unsecured Creditors
c/o Bush Kornfeld LLP
601 Union Street, #5000 Seattle,
WA 98101
(Via U.S. Mail)

PROOF OF SERVICE

Page 2

ALDRIDGE PITE, LLP
8880 Rio San Diego Drive, Suite 725
San Diego, CA 92108
Telephone: (858) 750-7600

1
2 John Bender
3 Corr Cronin LLP
4 1015 Second Avenue
5 Floor 10
6 Seattle, WA 98104-1001
7 (Via U.S. Mail)

8
9 Armand J Kornfeld Bush Kornfeld LLP
10 601 Union St #5000
11 Seattle, WA 98101-2373
12 (Via U.S. Mail)

13 Jason E Wax
14 Bush Kornfeld LLP
15 601 Union Street
16 Suite 5000
17 Seattle, WA 98101
18 (Via U.S. Mail)

19 Aimee S Willig
20 Bush Strout & Kornfeld
21 601 Union Street
22 Suite 5000
23 Seattle, WA 98101
24 (Via U.S. Mail)

25 **30 LARGEST UNSECURED CREDITORS**

26 Yongzhi Liang
27 103-2-1105, Bai Zi Wan Home, Chaoyang District
28 Beijing, Beijing 100124
(Via U.S. Mail)

Mingyi Hu
Room 2606, Qinzhou Mansion, No.6, Lane 111, Qinzhou Road
Shanghai China
(Via U.S. Mail)

CWN Holdings Limited
Trinity Chambers, PO Box 4301
Road Town, Tortola
British Virgin Island
(Via U.S. Mail)

Devont Capital Limited
PO Box 4301,
Road Town, Tortola
British Virgin Islands
(Via U.S. Mail)

Sinolite Industrial Co.
Bldg DEF, 19th Floor, Zhejiang Wuchan, Intl Plaza
No.445 Kaixuan Road, Jianggan District
Hangzhou
China
(Via U.S. Mail)

Cooperativa De Seguros Multiples
PO Box 363846
San Juan, PR 00936
(Via U.S. Mail)

Ruihua Ji
No. 11, Lane 688, Pingji Road, Minhang District
Shangai, Shangai 201100
(Via U.S. Mail)

Zheng Revocable Foreign Grantor Trust
7307 N Division St. Suite 303
Spokane, WA 99208
(Via U.S. Mail)

Chunying Tian
No. 102, 1st Floor, Unit 2, Building 11
No. 1999 Beichen Avenue, Weiyang District
Xi'an, Shanxi
(Via U.S. Mail)

Universal Insurance Company
PO Box 71338
San Juan, PR 00936
(Via U.S. Mail)

Ruzhen Zhang
No.1904, Building 1, No. 1, Shangdi Xinxu Road
Haidian District
Beijing, Beijing 100085
China
(Via U.S. Mail)

PROOF OF SERVICE

Page 4

ALDRIDGE PITE, LLP
8880 Rio San Diego Drive, Suite 725
San Diego, CA 92108
Telephone: (858) 750-7600

1 Qingxiao Jiang Room 1201, Unit 2, BLD #8,
2 Zhijing Yuan Xixi Cheng Yuan,
3 Xihu District Hangzhou, Zhejiang 310000
4 China
5 (Via U.S. Mail)

6 Tat Iu
7 Room 2301,Block A, Gaxaly Intl Building 167
8 Huancheng North Road
9 Hangzhou, Zhejiang 310005
10 China
11 (Via U.S. Mail)

12 Huimin Zhang
13 Xishan St, Building 1, Room 1-4-3
14 Dalian, Liaoning 116000
15 China
16 (Via U.S. Mail)

17 Kun Wang
18 No.144, Building 14, No.6 Crouching Tiger Bridge
19 Haidian District
20 Beijing, Beijing 100044
21 China
22 (Via U.S. Mail)

23 Zhuhua Li
24 17225 NE 126th Pl
25 Redmond, WA 98052 s
26 (Via U.S. Mail)

27 Ping Zhang
28 Room 252, Unit 2, No. 67 East Orchard
Tongzhou District
Beijing, Beijing 101116
China
(Via U.S. Mail)

Yunhua Liu
1155 Northeast 55th Street
Seattle, WA 98105
(Via U.S. Mail)

Robert W. Alfini
419 E. Orchard St.
Arlington Heights, IL 60005
(Via U.S. Mail)

PROOF OF SERVICE

Page 5

ALDRIDGE PITE, LLP
8880 Rio San Diego Drive, Suite 725
San Diego, CA 92108
Telephone: (858) 750-7600

1
2 Thomas and Jodi Temple w/ rights of survivorship
3 21 Sycamore Ln.
4 Chester Springs, PA 19425
5 (Via U.S. Mail)

6 Azure Blue Service Limited
7 Trinity Chambers, PO Box 4301, Road Town
8 Tortola, British Virgin VG1110
9 United Kingdom
10 (Via U.S. Mail)

11 Peng Lyu and Li Tan
12 1124 E Lake Sammamish Pkwy NE
13 Sammamish, WA 98074
14 (Via U.S. Mail)

15 Shiyang Chen
16 1102, unit 1, building 5, Mingliyuan Xixi
17 Chengyuan, Xihu District
18 Hangzhou, Zhejiang 310012
19 China
20 (Via U.S. Mail)

21 Ching-Ping Hu (Grace Shin)
22 3rd Flr, No. 143, Section 6
23 Nanjing East Road, Neihu District
24 Taipei City, Taiwan 114
25 (Via U.S. Mail)

26 Barry M. Abzug Revocable Trust
27 1949 Leonard Road Falls Church
28 Falls Church, VA 22043
(Via U.S. Mail)

Yi Xia
Building no.8, Lane 600 Fei Hong Road, Y
angpu District Shanghai, Shanghai
China
(Via U.S. Mail)

Steven W. Shaw
11 River Park Drive
Cormwell, CT 06416
(Via U.S. Mail)

1 Junming Chen
2 10-2-402 Zhichengyuan Xixichengyuan,
3 Xihu Dist.
4 Hangzhou, Zhejiang 310030
5 China
6 (Via U.S. Mail)

7 Elizabeth Plaza
8 1121 Parrotts Cove Rd
9 Greensboro, GA 30642
10 (Via U.S. Mail)

11 Yulan Ren
12 No. 5, Building 15, Meidu Huating
13 76 Lianhua North Road
14 Dujiangyan City,
15 Sichuan Province 611800
16 China
17 (Via U.S. Mail)

18 I declare under penalty of perjury that the foregoing is true and correct.

19 Dated: March 18, 2024

20 /s/ Lauren Timby
21 LAUREN TIMBY

22 **PROOF OF SERVICE**

23 Page 7

24 **ALDRIDGE PITE, LLP**
25 8880 Rio San Diego Drive, Suite 725
26 San Diego, CA 92108
27 Telephone: (858) 750-7600